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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/909,072  | 07/18/2001  | Michael B. Jones     | MS1-204USC1         | 9796             |
| 22801   | 7590        | 12/06/2006           | EXAMINER            |                  |
| LEE & HAYES PLLC<br>421 W RIVERSIDE AVENUE SUITE 500<br>SPOKANE, WA 99201 |             |                      | TRUONG, CAMQUY      |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 2195                |                  |

DATE MAILED: 12/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/909,072

Applicant(s)

JONES ET AL.

Examiner

Camquy Truong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 24-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Claims 24-30 are presented for examination.

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 24-30 are rejected under 35 U.S.C. 101 because they are directed to non-statutory subject matter.
3. Claims 24- 25 are rejected under 35 U.S.C 101 because the claimed invention is directed to non-statutory subject matter as not being tangible because the software program product claims do not result in a practical application producing a useful, concrete, an tangible result to form the basis of statutory subject matter under 35 USC 101.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sreenan (U.S. Patent 5,742,772) in view of Ichinose et al. (U.S. Patent 5,307, 496).

6. As to claim 24, Sreenan teaches the invention substantially as claimed including: in computer system having resources and a resource planner for granting reservations of amounts of resources to activities, a computer-implemented method comprising:

Submitting a request for a reservation of a set of resources in specified amounts from an activity to the resource planner (resource manager receives the QOS specification (set of resource demands, amount of memory) from clients through bridge service, col. 12, lines 35-37; col. 5, lines 45-60);

Determining at the resource planner that the request may not be granted (resource manager determine whether resource can be allocated to meet the QOS specification (col. 2, lines 21-22; col. 12, lines 42-44);

Using the returned list at the activity to reformulate the request for a reservation of the set of resources to specify new requested amounts (client may alter their QOS specifications (set of resource demands/ amount of memory), col. 2, lines 23-24; col. 9, lines 65-67; col. 12, line 45); and

Resubmitting the reformulated request to the resource planner (clients may alter its request and retry and the internal negotiation process is repeated, col. 9, lines 65-67; col. 10, lines 60-61).

7. Sreenan does not explicitly teach returning from the resource planner to the activity a list of amounts of the set of resources that are currently available to the activity. However, Ichinose teaches returning from the resource planner to the activity a list of amounts of the set of resources that are currently available to the activity (the resource supply judging portion receives a resource utilization request generated in the other computer C1 or C2, upon receipt of such a request, judges by reference to the resource table whether or not it is possible to supply the resource that is requested in the resource utilization request from its own computer, col. 6, lines 44-54).

8. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching the Sreenan and Ichinose because Ichinose's returning from the resource planner to the activity a list of amounts of the set of resources that are currently available to the activity would improve the efficiency of Screenan's system by using the a list of amounts of the set of resource to the activities improve the reliability on the system as a whole.

### ***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) The invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have

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the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 25-30 are rejected under 35 U.S.C. 102 (e) as being anticipated by Sreenan (U.S. Patent 5,742,772).

11. As to claim 25, Screenan teaches the invention as claimed including: in a computer system having resources and a resource planner for granting reservations of amounts of resources to activities performed on the computer system (col. 5, lines 45-62; col. 7, line 59 – col. 8, line 18), a method comprising the computer-implemented steps of:

negotiating between the resource planner and activities to reserve shares of the resources with the resource planner on behalf of the activities (col. 2, lines 10-26; col. 10, lines 63); and

in view of changing resource usage or requirements, renegotiating between the resource planner and the activities to change reservations of resources on behalf of the activities to reflect the changing resource usage or requirements (col. 2, lines 10-26; col. 10, lines 27-63).

12. As to claim 26, Screenan teaches the changing resource usage or requirements are the product of a new activity being performed (col. 2, lines 22-26).

13. As to claim 27, Screenan teaches the changing resource usage or requirements

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are the product of an activity changing its resource requirements (col. 2, lines 22-26; col. 10, lines 27-35).

14. As to claims 28- 29, Screenan teaches the changing resource usage or requirements are the product of a persistent overload of use of a resource (col. 11, lines 32-52).

15. As to claim 30, Screenan teaches the changing resource usage requirements are the product of a change in resource allocation policy (col. 2, lines 27-35).

***Response to the argument***

16. Applicant arguments filed on 9/26/06 regarding claims 24-30 had been considered but they are not persuasive.

17. This action is in response to the argument file on 3/4/2005. Applicant argued (1) Sreenan neither disclose nor suggest in view of changing resource usage or requirements. (2) Sreenan does not disclose renegotiating. (3) The negotiating in Sreenan is not between the resource planner and the activities but rather between the bridge service and the plurality of clients.

18. Examiner respectfully traverses Applicant's remarks:

As to point (1), Sreenan teaches the client may alter their Quality Of Service QOS specification (a set of resource demand, amount of memory) (col. 23-24; col. 12, lines 45-46).

As to point (2) Sreenan teaches receiving a QOS specification from clients. As part of the QOS contract negotiation process, the clients may alter their QOS and retry if lacking of available resources (19-26; col. 12, lines 45-47). Thus, Sreenan teaches after negotiating process, the client may alter their QOS (amount of memory) and retry the negotiation process again (renegotiation) by resubmit the QOS, if lacking of available resources.

As to point (3) Sreenan teaches a resource management within a bridge service, which is used to determine whether resource can be allocated to meet the QOS specification from each of plurality of clients (col.7, lines 59-62; col. 12, lines 30-44). Thus, Sreenan teaches a resource management within a bridge service is resource planner and the QOS specification of each of the plurality of clients is the activities.

**19. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of



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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Conclusion***

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Camquy Truong whose telephone number is (571) 272-3773. The examiner can normally be reached on 8:00Am – 5:00Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-3756.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIP. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIP system, contact the Electronic Business Center (EBC) at 866-217-9197(toll-free).

Camquy Truong

November 27, 2006

  
